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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

WILLIE CLYDE HARRIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Under Rule 19(1)(b):	
The United States Court of Appeals for the Seventh Circuit has acted in this matter directly contrary to a decision of the United States Supreme Court, *Gonzales* v. *United States*, 348 U.S. 407 (1955):	
(1) May a local board fail to give notice of the recommendation of the Justice Department on the matter of classification, to the registrant, or misdirect it to the wrong address (after being notified of the change, and the defendant having testified that he failed to receive it)? Or does failure on the part of the local board deny to the defendant his right to a meaningful appeal?	5
The Trial Court and the United States Court of Appeals for the Seventh Circuit have rendered a decision on an important question of Federal law affecting the substantive and procedural rights of a substantial number of registrants which question has not been, but should be considered by this Court, to-wit:	
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Petitioner, Willie Clyde Harris, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Seventh Circuit entered on July 27, 1971, Petition for Rehearing denied August 20, 1971.

CITATION TO THE OPINION BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit printed in the Appendix, infra, Appendix page 1, is unreported at the present.

JURISDICTION

The Opinion and Judgment of the Court of Appeals for the Seventh Circuit was entered on July 27, 1971. A timely Petition for Rehearing was filed on August 10, 1971. The Petition for Rehearing was denied on August 20, 1971. This Petition for Writ of Certiorari will be timely filed on or before September 20, 1971.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. The Trial Court and the United States Court of Appeals for the Seventh Circuit have acted in this matter directly contrary to the decision of this Court in *Gonzales* v. *United States,* 348 U.S. 407 (1955) in holding that the lack of notice of the recommendation of the Justice Department did not deny the defendant his right to a meaningful appeal.

2. The Trial Court and the United States Court of Appeals for the Seventh Circuit have decided an important question of federal law which has not been, but should be, considered by this Court; that is, does a local board have authority to induct a registrant who has no notice of his classification status?

STATEMENT OF THE CASE

This criminal action is based upon an indictment which charged the defendant with refusing to report for civilian work in violation of 50 App. U.S.C. 462.

Mr. Harris, as a duly ordained minister of Jehovah's Witnesses, timely filed an appeal from the I-A-O Classification issued on March 16, 1965. The Appeal Board reviewed his file and tentatively determined to refuse to

reclassify Mr. Harris IV-D or I-O. The registrant was not notified of this tentative decision.

Thereafter, on August 3, 1965, the Appeal Board forwarded the registrant's file to the Justice Department for their review. On November 20, 1967, while his file was still pending before the United States Department of Justice, Mr. Harris filed a written notice of a change of address with Local Board No. 79.

The Justice Department returned the file to the Appeal Board on February 15, 1968, two and one-half years after receiving the file, and recommended that the registrant be classified I-O. As the Appeal Court has pointed out, their recommendations contained no comments on the legitimacy of the registrant's IV-D claim.

The Board attempted to forward a copy of the Justice Department's report to the registrant, but erroneously overlooked the change of address which had been filed and mailed the report to Mr. Harris' old address. Included with the misdirected report was a letter stating that Mr. Harris had thirty days in which to submit additional information, and, if none was submitted, that the Appeal Board would act pursuant to the Justice Department's recommendations.

Mr. Harris never received that letter, nor its attachment from the Department of Justice, nor any other notification that a I-O Classification was being recommended. Moreover, Mr. Harris was never notified that a I-O Classification had been issued. (Transcript, pp. 7, 8, 9, 33-37, 52, 76 and 77).

The Local Board mailed the new S.S.S. 110 Notice of Classification on February 19, 1968. Four days later they mailed an S.S.S. 127, a current information questionnaire, also addressed to the wrong address. Thereafter, the Local

Board sent out letters to three of the registrant's acquaintances in an attempt to determine his current address.

All mailings subsequent to May 31, 1968 were delivered to the address which Mr. Harris had filed six months before and which the Local Board had previously erroneously overlooked. Without attempting to determine whether Mr. Harris had received any of the extremely crucial information and instructions sent between November 20, 1967 and May 31, 1968, and without attempting to inform the registrant of his current Selective Service classification status, the Local Board began processing the registrant for civilian work.

On June 1, 1968, Mr. Harris received an Order to Report for a physical. This was the first communication the registrant received since he filed his appeal in March of 1965.

Mr. Harris appeared at the examining station on the day appointed. He has testified that a clerk separated him from the rest of those being examined and informed him that he was physically unqualified. The D.D. 62 form in the registrant's file, however, indicates that he passed his physical.

Thereafter, Mr. Harris was ordered to report for civilian work, and he was subsequently convicted for refusing to obey this order.

The defendant timely filed Notice of Appeal to the United States Court of Appeals for the Seventh Circuit and on July 27, 1971 the Seventh Circuit rendered its opinion affirming the Trial Court. Application for rehearing was timely made and was denied on August 20, 1971.

This Petition for Writ of Certiorari will be timely filed on or before September 20, 1971.

REASONS FOR GRANTING WRIT

I.

THE TRIAL COURT AND THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAVE ACTED IN THIS MATTER DIRECTLY CONTRARY TO THE DECISION OF THIS COURT IN GONZALES v. UNITED STATES, 348 U.S. 407 (1955) IN HOLDING THAT THE LACK OF NOTICE OF THE RECOMMENDATION OF THE JUSTICE DEPARTMENT DID NOT DENY THE DEFENDANT HIS RIGHT TO A MEANINGFUL APPEAL.

This Court, in *Gonzales* v. *United States,* 348 U.S. 407 (1955) ruled unequivocally that one seeking a reclassification has an absolute right to review the recommendation of the Department of Justice in order to make a meaningful appeal. The Court explained its position as follows:

> " . . . we believe it also to be implicit in the act and regulations — viewed against our underlying concepts of procedural regularity and basic fair play — that a copy of the recommendation of the Department be furnished the registrant at the time it is forwarded to the Appeal Board, and that he be afforded an opportunity to reply." (348 U.S. at 412).

The Court went on to state that:

> "An opportunity for the registrant to reply is, therefore, the only means of insuring that this board will have *all* of the relevant data. Furthermore, if the registrant is to present his case effectively to the Appeal Board, he must be cognizant of all the facts before the Board as well as the overall position of the Department of Justice." (348 U.S. at 413).

> "The Petitioner was entitled to know the thrust of the Department's recommendation so he could muster his facts and arguments to meet its contentions." (348 U.S. at 414).

In the case at hand, Mr. Harris was never notified of the recommendation of the Justice Department, nor of the fact that he had thirty days to add information before the Appeal Board would act pursuant to the recommendation and classify him I-O.

The Court of Appeals concluded that the recommendation of the Justice Department was essentially favorable to the defendant, that the report did not pass on the IV-D claim, and that lack of knowledge of these recommendations was not prejudicial.

A review of the facts of this situation clearly leads to a contrary conclusion:

> (1) Had the registrant known that his IV-D claim had never been considered, he would have immediately sought to submit more information in support of his claim during the thirty days allotted for this purpose.

The *Gonzales* decision would indicate that only in extremely unusual circumstances would the Board be relieved of the responsibility to notify a registrant of Justice Department recommendations. Such a case might arise when the Department recommended the lowest classification requested by the registrant, and the Appeal Board granted this classification. In all other cases the recommendations of the Justice Department must be considered prejudicial, since *the granting of one classification necessarily entails the rejection of any request for a lower classification.*

The Second Circuit has recognized the logic of this argument. In *United States* v. *Purvis,* 403 F.2d 555 (2nd Cir. 1968), the Court held that notice of the Justice Department

recommendations were required even though they suggested that the registrant be classified I-A-O. Purvis had requested a I-O.

Ultimately, any recommendation other than the lowest classification requested is prejudicial since upon receiving notice the registrant could immediately attempt to buttress his rejected claim with supporting information before the Appeal Board made its final decision. The Board's erroneous mailing of the Justice Department's recommendations has denied Mr. Harris this opportunity.

> (2) The registrant "must be cognizant of all the facts before the board as well as the overall position of the Department of Justice." (*U. S.* v. *Gonzales,* Supra, at 413).

Fundamental principles of the Anglo-American legal tradition require that an individual asserting a claim against a government agency be advised as to any policies or reasoning on which the rejection of that claim might be based. The Fifth Amendment of the United States Constitution has formalized this philosophy and labeled it "due process of law". Mr. Harris has been denied this due process since the erroneous mailing of the Justice Department's recommendation prevented him from discovering the reasoning that led to his classification.

As was stated in *United States* v. *Cummins,* 425 F.2d 646 (8th Cir. 1970), in a case where the State Director took an appeal and the registrant was not notified,

> "Every citizen, including youthful registrants, under the Selective Service laws, is entitled to be substantially informed as to any government action which may affect his liberty or life. No government procedure may stand which fails to provide such information. To be both fairly and timely advised is funda-

> mental to the basic concepts of due process. 'Clandestine due process' has never found favor of constitutional basis in courts of law."

The thrust of *Gonzales* and *Cummins* leads to the conclusion that the lack of notice of the reasoning behind a decision constitutes a denial of due process. Without such notice neither the registrants nor the court can determine whether the decision was based on valid criteria. (*Dickinson* v. *U. S.*, 346 U.S. 389 (1953); *U. S.* v. *Haughton*, 413 F.2d 736 at 739 (9th Cir. 1969); *U. S.* v. *St. Clair*, 293 F. Supp. 337 at 341 (E.D.N.Y. 1968), and *U. S.* v. *Lemmens*, 430 F.2d 619 (7th Cir. 1970).

In the case at hand, Mr. Harris never was given any reasons for the rejection of his IV-D claim, nor was he notified of the reasoning behind his I-O Classification since he never received a copy of the Justice Department's recommendations. Under the circumstances, where the classification sought was lower than that ultimately issued, the defendant was denied due process in the channels of the Selective Service System by the fact that an administrative error sent the recommendation of the Justice Department to the wrong address, effectively depriving the registrant an opportunity to review the reasoning behind his I-O Classification of the rejection of his IV-D claim. The Appellate Court's finding that the IV-D claim was not even considered by the Justice Department suggests that the lack of notice was substantially prejudicial, since Mr. Harris certainly had a right to have this claim heard by the Appeal Board.

II.

THE TRIAL COURT AND THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAVE DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, CONSIDERED BY THIS COURT; THAT IS, DOES A LOCAL BOARD HAVE AUTHORITY TO INDUCT A REGISTRANT WHO HAS NO NOTICE OF HIS CLASSIFICATION STATUS?

It is immediately obvious that the Local Board could not induct a registrant without notifying him of his original classification, since to do so would deny him of his right to a personal appearance and an appeal. It is equally obvious that a registrant cannot be inducted while an appeal is pending.[1] The question here, however, is can a registrant be inducted after his appeal has been denied but before he has been notified of the outcome?

It is the clear intent of the regulations that the registrant should be notified of the outcome of his appeal. 32 C.F.R. Sec. 1626.31 provides that after receiving notice of the Appeal Board's decision the Local Board should "(a) Mail a Notice of Classification to the registrant . . . ". Without this notice, the registrant would naturally assume that his appeal was still pending. Mr. Harris made just that assumption. (Transcript at pp. 43, 51-53).

By erroneously mailing the registrant's new classification card to the address which Mr. Harris had reported changed six months before, the local board led the defen-

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[1] 32 C.F.R. Sec. 1626.41 provides that any induction order issued by the board while an appeal is pending is ineffective and should be cancelled. 32 C.F.R. Sec. 1660.20(d) incorporates this provision and makes it applicable to a I-O with an appeal pending.

dant to believe that he was being ordered to report for civilian service while still classified I-A-O and with an appeal pending. This administrative irregularity would naturally lead the registrant to believe that:

(1) As a I-A-O he could at any time be ordered to report for alternate non-combatant service in the military rather than a hospital.

(2) He was issued an invalid order since his appeal was still pending.

The Court of Appeals passed squarely on the issue and held that they were "unable to perceive any prejudice to the appellant resulting from the mailing of the erroneously addressed communications in question." This conclusion is unwarranted in the light of the facts of this case since the defendant has clearly been prejudiced in the following manner:

(1) Since Mr. Harris thought his appeal was pending he did not attempt to resolve what he considered to be an error in the report of his physical examination.

If the defendant had known that his appeal had been resolved against him, he would have explained to the Local Board that Afees had erred in marking his card, he would have supported his contentions with supplementary documentations of his ailments, and he would have petitioned the Local Board for a re-evaluation of his physical condition. If the Board felt that the registrant's claim was justified, they would have forwarded him to another medical interview pursuant to the instructions of Local Board Memoranda Number 113 and 121. But Mr. Harris never bothered to pursue this claim, since he knew he would still have thirty days after his appeal was filed to submit new information.

(2) Had the defendant known he was classified I-O rather than I-A-O and could not be ordered to report for military service he might have reported for civilian hospital work.

The possibility of an order to serve in non-combatant active duty would have required Mr. Harris to compromise his religious principles if he decided to report to the hospital under these conditions. An order under a I-O Classification would not have required such a great compromise. But, Mr. Harris was never given enough information to know that it was a I-O order which he was refusing. And he was subsequently convicted for rejecting a choice which he never had.

(3) If the defendant had known his IV-D claim had been rejected he could have added evidence to his file which would have required the board to reopen and reconsider his claim.

This was an extremely important alternative since two and one-half years had lapsed since the claim had originally been submitted. The legitimacy of a IV-D claim depends to a large extent on the leadership role one develops in his religious community. Naturally, as Mr. Harris matured he would begin to assume a more active adult role in his congregation of Jehovah's Witnesses. Consequently, his ministerial teaching, preaching and proselytic activities would become more similar to that which the Local Board would characterize as a vocation. The fact that he could have submitted this information at any time is not relevant, since up until the day of trial, when the registrant realized he had been classified I-O, he had no reason to believe his original claim was insufficient.

(4) The Local Board's failure to advise Mr. Harris of his classification status caused him to forego various administrative remedies which would have otherwise been available.

32 C.F.R. Sec. 1626.61(a)(b) provides for a discretionary reopening upon the request of the State Director. If the defendant thought his claim valid, he could have written the State Director himself or sought aid from the Local Board appeal agent. Under the circumstances, however, Mr. Harris had no reason to ask for this discretionary remedy since, not having been notified of the outcome of his appeal, he had no indication that his file was ever closed by the Appeal Board.

Since the lack of notification effectively precluded the registrant from seeking numerous other forms of administrative relief by lulling him into a false sense of security with the impression that his appeal was still pending, the Local Board's mailing error has indeed been prejudicial.

Moreover, a lack of notice of the result of an appeal must necessarily always be prejudicial, since without such notice a registrant would have no indication that the time to seek discretionary remedies was upon him. Whether these remedies would ultimately satisfy the registrant is certainly not an issue at this time. The point is that these methods were authorized by Congress with the obvious intention that they be utilized. Any local board action which would frustrate this intent, effectively blocking this access to a rehearing constitutes a denial of the due process mandated by the Fifth Amendment of the United States Constitution.

CONCLUSION

It is respectfully submitted that this Court should issue its Writ of Certiorari in order that it may consider the important questions concerning a local board's authority to induct one who has not been notified of his classification status and concerning the registrant's claim that lack of notice of the Appeal Board's actions and the Justice Department's recommendation denied him the due process of law mandated by the Fifth Amendment of the United States Constitution.

Respectfully submitted,

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